

REMARKS

In an office action dated 16 May 2005, the Examiner rejects 1-4, 6-29, 31-35, and 37-59 (all pending claims). In response to the office action, Applicants amend claims 1-4, 8, 31, 37-39, 44, 45, 47-49, 51, 52, and 59. Applicants further traverse the rejections. Claims 1-4, 6-29, 31-35, and 37-59 remain in the Application. In light of the amendments and the following arguments, Applicants respectfully request that the Examiner allow the pending claims and the Application.

In the office action, the Examiner objects to claim 37. Claim 37 is amended to recite that claim 37 depends from claim 31. Thus Applicants respectfully request the objection be removed.

The Examiner rejects claim 1 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 4,230,990 issued to Lert Jr. et al. (Lert). To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Bariant, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). The **test for anticipation** is symmetrical to the test for infringement and has been stated as: “That which would literally infringe [a claim] if later in time anticipates if earlier than the date of invention.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 1931, 1938 (Fed. Cir. 1983). The Examiner has not provided a reference, Lert, that teaches each and every limitation of claim 1.

Amended claim 1 recites “at least one analysis module for receiving signals that include data wherein said data includes data for an unknown work, analyzing said data, generating a representation of said data including said data of said unknown work, and transmitting said representation over a network to an identification server and at least one identification server for receiving said representation from said at least one analysis module, and determining the identity of said work from said representation.” Lert does not teach these limitations. Instead, Lert teaches a system for identifying broadcast works, such as television programs. Lert uses the received signals to identify a broadcast by pattern matching. In order to pattern match, a received work with a known work Lert uses a trigger signal to indicate the beginning of the program. The present invention does not need a trigger signal instead the present invention generates a representation of the data received and can pattern match portions of the representation to determine the identity. The Lert system only works if a specific point of the work is identified to extract the data that can be matched to stored information. Claim 1 is an improvement over Lert as the system of claim 1 does not need to identify the start of work to perform identification. Thus, applicants respectfully request that the rejection of claim 1 be removed and amended claim 1 be allowed.

Claims 2-4 and 6-29 are dependent upon amended claim 1. Thus, claims 2-4 and 6-29 are allowable for at least the same reasons as claim 1. Therefore, Applicants respectfully request that the rejections of claims 2-4 and 6-29 be removed and claims 2-4 and 6-29 be allowed.

Claim 31 recites a method performed by an analysis module including the step of generating the representation from received data as recited in claim 1. Thus, claim 31 is allowable for at least the same reason as amended claim 1 as it includes the step of generating the representation from the received that is not disclosed in Lert. Therefore,

applicants request the rejection of claims 31 be removed and amended claim 31 be allowed.

Claims 32-35 and 37-50 are dependent upon amended claim 31. Thus, claims 32-35 and 37-50 are allowable for at least the same reasons as amended claim 1. Therefore, Applicants respectfully request that the rejections of claims 32-35 and 37-50 be removed and claims 32-35 and 37-50 be allowed.

Amended claim 52 recites an apparatus for receiving data including data for a work, generating a representation from the data, and transmitting the representation over a network. Thus, amended claim 52 is allowable over Lert for at least the same reasons as amended claim 1. Therefore, Applicants respectfully request that the rejection of claim 52 be removed and amended claim 52 be allowed.

Claims 53-58 are dependent upon amended claim 52. Thus, claims 53-58 are allowable for at least the same reasons as amended claim 52. Therefore, Applicants respectfully request that the rejections of claims 53-58 be removed and claims 53-58 be allowed.

Amended claim 59 recites an apparatus that performs the method of claim 51. Thus, claim 59 is allowable for at least the same reasons as amended claim 51. Therefore, Applicants respectfully request that the rejection of claim 59 be removed and amended claim 59 be allowed.

The Examiner rejects claims 51 under 35 U.S.C. §103(a) as being unpatentable over Lert in view of U.S Patent Number 6,026,439 issued to Chowdhury et al. (Chowdhury). In order to maintain a rejection the Examiner has the burden of providing evidence of *prima facie* obviousness. See MPEP §2143. See also In Re Vaeck, 947 F.2d

488, 20 USPQ2d 1438 (Fed. Cir. 1991). In order to prove *prima facie* obviousness, the Examiner must provide evidence in the prior art of a motivation to combine or modify a reference, a reasonable expectation of success, and a teaching of each and every claimed element. *Id.*

Claim 51 recites receiving a representation of data including data of an unknown work over a network, identifying said unknown work using said representation, and updating a playlist with an identification of said representation. Lert does not teach these limitations. Instead, Lert teaches a system for identifying broadcast works, such as television programs. Lert uses the received signals to identify a broadcast by pattern matching. In order to pattern match, a received work with a known work Lert uses a trigger signal to indicate the beginning of the program. The present invention does not need a trigger signal instead the present invention generates a representation of the data received and can pattern match portions of the representation to determine the identity. The Lert system only works if a specific point of the work is identified to extract the data that can be matched to stored information. Claim 51 generates a representation of all data received and then identifies the work from that representation. Claim 51 does not need to know the beginning of the data for an unknown work like is required in Lert. Thus, Lert does not teach the generating of the representation of data claimed in claim 51 and identifying the work from the representation claimed.

Chowdhury also does not teach these limitations. Instead Chowdhury teaches a system in which the data for the work is known. Thus, Chowdhury does not teach these limitations. Since neither Lert nor Chowdhury teach the limitations of amended claim 51, Applicants respectfully request that the rejection of claim 51 be removed and amended claim 51 be allowed.

If the Examiner has any questions regarding this response or the application in general, the Examiner is invited to contact the undersigned at 775-586-9500.

Respectfully submitted,
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